RECENT IMPORTANT DECISIONS

ANTI-TRUST LAW—POLICE POWER—RESTRAINTS OF TRADE—NECESSITY OF INTENT.—Action was brought by the state against certain corporations charging them with a violation of the state statute declaring null and void all combinations made with a view to lessen, or which tend to lessen, competition in the manufacture or sale, or to control the prices of articles of domestic growth or of domestic raw material. On demurrer, *Held:* (1) That the Act is constitutional; (2) That it applies only to unreasonable restraints of trade; (3) That it is unnecessary to allege that the acts charged actually did restrain trade. *State* v. *Virginia-Carolina Chemical Co. et al.* (1905), — S. C. —, 51 S. E. Rep. 455.

(1) Where the state anti-trust laws exempt from their operation certain classes of combinations, they have been held invalid, as denying the equal protection of the laws. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 22 Sup. Ct. 431, 46 L. Ed. 679. Contra, *State* v. *Schlitz Brewing Co.*, 104 Tenn. 715, 59 S. W. 1033, 78 Am. St. Rep. 941. But where the statutes are general in their terms, embracing all classes, they are upheld as a valid exercise of the police power. *State* v. *Buckeye Pipe Line Co.*, 61 Ohio St. 520, 56 N. E. 464; *Smiley* v. *Kansas*, 196 U. S. 447, 49 L. Ed. 546, 25 Sup. Ct. 289; *Houck* v. *Anheuser-Busch Brewing Ass'n*, 88 Texas 184, 30 S. W. 869; *In re Davies*, 168 N. Y. 89, 61 N. E. 118. (2) In holding that the Act applied only to unreasonable restraints of trade the court adopted the views of JUSTICE BREWER in *Northern Securities Co.* v. *United States*, 193 U. S. 197, 24 Sup. Ct. 436, 48 L. Ed. 679, declining to follow the decision of JUSTICE HARLAN therein. The contrary was directly held in *United States* v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. Ed. 1007; *United States* v. *Coal Dealers' Ass'n*, 85 Fed. 252. (3) The defendants contended that as the only acts charged in the complaint were lawful, and as there was no allegation that they actually did lessen competition, no unlawful intent would be inferred. But the court was of the opinion that a restraint of trade would reasonably be the result of the acts alleged, and therefore the law would presume that such a result was intended. *United States* v. *The Paul Sherman*, Pet. (C. C.) 98, 27 Fed. Cas. No. 16,012. And where such an intent exists, producing a dangerous probability that the acts contemplated will occur, there the statute directs itself against that dangerous probability as well as against the completed result. *Swift & Co.* v. *United States*, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518; *Harding* v. *American Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 64 L. R. A. 738 and Note. Cf. *MacGinniss* v. *Boston & Mont. Consol. Copper & Silver Min. Co.*, 29 Mont. 428, 75 Pac. 89, holding that a specific intent or necessary tendency to restrain trade must be shown.

BANKS AND BANKING — COLLECTION — NEGLIGENCE.— Defendant bank received a cashier's check for collection and entered its face as a deposit to the credit of plaintiff. Defendant sent the check to the drawee bank for collection. Drawee dishonored it, but for nine days defendant failed to notify

the plaintiff thereof, the drawee becoming insolvent in the meantime. Plaintiff declared on the common counts and in several special counts but in each failed to allege any damages suffered. *Held,* judgment for plaintiff should be reversed. *Jefferson County Savings Bank* v. *Hendrix* (1905), — Ala. —, 39 So. Rep. 295.

There seems to be a conflict as to the effect of the deposit of an out of town check in a bank. *Bank* v. *Loyd,* 90 N. Y. 530; *Scammon* v. *Kimball,* 92 U. S. 362; *Hoffman* v. *Bank,* 46 N. J. L. 604; contra, *Armour Co.* v. *Davis,* 118 N. C. 548; *Beal* v. *Somerville,* 50 Fed. Rep. 647. This conflict is, however, perhaps more apparent than real in that nearly every case turns upon some particular phase of the question which it presents as evidencing the intention of the parties. *Bank* v. *Hubbell,* 117 N. Y. 384; *In re State Bank,* 56 Minn. 119, 45 Am. St. Rep. 454; *Bank* v. *Bank,* 114 N. Y. 28. The deposit of a check in a bank for collection does not constitute the bank the owner of the check, so as to give the depositor a right of action for money had and received, but merely an agent for collection. *Balbach* v. *Frelinghuysen,* 15 Fed. 675, *Bailie* v. *Bank,* 95 Ga. 277; *Sweeny* v. *Easter,* 1 Wall. 166; *in re State Bank,* supra. And the fact that here the bank credited the plaintiff with the amount of the check does not necessarily change the rule. *Armour Co.* v. *Davis,* supra; *Beal* v. *Somerville,* supra. The special counts were bad because of the lack of averments of damages suffered. *Morris* v. *Bank,* 106 Ala. 383; *Sohlien* v. *Bank,* 90 Tenn. 221; *Trust Co.* v. *Newland,* 97 Ky. 464. For its negligence in collecting the defendant is liable for the resulting damages which may be, although not necessarily so, the amount of the check. *American Ex. Co.* v. *Parsons,* 44 Ill. 312. It is prima facie negligence for a collecting bank to send a cashier's check to the drawee bank for collection. *Bank* v. *Goodman,* 109 Pa. St. 422; *Bank* v. *Packing Co.,* 117 Ill. 100; *First Nat. Bank* v. *Fourth Nat. Bank,* 56 Fed. 967; *Bank* v. *Burns,* 12 Colo. 539.

BILLS AND NOTES—DEMAND FOR PAYMENT.—A demand note ran for six years, a few payments having been indorsed, when the maker became insolvent and plaintiff, the holder, caused demand to be made for the balance due and gave notice of non-payment to the defendant, an indorser. *Held,* that though the indorser waives demand of payment at the expiration of four months after the note's date (thus avoiding the effect of the statute making it then overdue) yet demand for payment must be made within a reasonable time under all the circumstances or the indorser will be discharged. *Hampton* v. *Miller* (1905), — Conn. —, 61 Atl. Rep. 952.

The fact that the defendant indorsed the note knowing that demand would not be made within four months constituted a waiver of demand at the expiration of such time only and not a waiver of all demand. *Hayes* v. *Werner,* 45 Conn. 246. By such waiver the parties merely prevented the instrument from becoming overdue and dishonored at the end of four months. The rule is that when a negotiable instrument is payable on demand, presentment and demand must be made within a reasonable time after its issue (GENL. ST. 1902, § 4241—the rule of the Negotiable Instruments Law) or the indorser will stand discharged. *Lockwood* v. *Crawford,* 18 Conn. 360;